

**Q: As stated in Article 5.01 Laws to be observed, you are requiring the contractor to make determinations on complex Federal and State laws, with that we are hereby “immediately reporting” our concerns on potential discrepancies may exist in requesting this work to be performed. These issues present some important questions that need to be clarified ASAP.**

**Q: Under what permit will authorization be given to the contractor to remove and dispose of the 11,000 CY of TSCA (Hazardous Waste) so the contractor will not be liable for potentially dumping TSCA hazardous waste into a Non-TSCA disposal cell?**

*A: Work under this contract will be completed under the oversight of the State Enhanced Remedy (SER) Committee. The State Enhanced Remedy derives its authority from Section XI of the USEPA Superfund Record of Decision for the New Bedford Harbor Superfund Site, dated September 25, 1998. The Commonwealth of Massachusetts petitioned EPA to allow the inclusion of navigational dredging projects within New Bedford Harbor as an enhancement of the Superfund remedy. EPA accepted the Commonwealth’s request to include navigational dredging as an enhancement of the selected remedy.*

*(Not sure this goes here, but here are my addition.)  
The MassDEP and EPA have MOA signed (Jan 10, 2005), which designated the MassDEP as the lead agency for the Navigational Dredging portion of the New Bedford Harbor Superfund Site. Superfund regulations allow for the on site disposal of site wastes with out permits. ARARs are used instead of the regular regulatory process.*

*Also, the CAD locations were also selected by a State CZM public process (DDMP).*

*For the purposes of this project, the SER Committee has determined that the work to be conducted at the EPA Dredge Area and the New Bedford Rowing Facility is navigational dredging associated with the SER provision of the 1998 ROD, as opposed to remedial dredging being conducted on behalf of USEPA. The bidder is under no obligation to meet USEPA’s cleanup goals for Superfund remediation during the course of this project, simply to complete the work as stipulated within the contract documents.*

*Prior to the bidding out of this project, MassDEP requested that the director of the Office of Site Remediation and Restoration at EPA conduct a review and make a determination with regard to the suitability of the use of Confined Aquatic Disposal Cell #2 (CAD Cell#2) for use as a disposal cell under the Toxic Substances Control Act (TSCA). The final determination concluded that “the proposed method of disposing of the PCB-contaminated sediments in a CAD cell(s) north of Route 6 in New Bedford Harbor does not pose an unreasonable risk to human health or the environment” under conditions listed within the determination. This determination is included with this document as Appendix A.*

*The bidders shall note that a TSCA determination has previously also been issued for CAD Cell #1.*

*The SER Process, through a special designation contained within the Superfund ROD for New Bedford Harbor, replaces the standard environmental permitting for this work. The bidder is under no obligation to obtain other environmental permits as long as the bidder completes the work in conformance with the contract documents. As noted above, the EPA has issued TSCA determinations for both CAD Cell #1 and CAD Cell #2. Provided the bidder conducts the work in accordance with the contract documents, the contractor is allowed to place the navigational dredge material generated as part of the work into the specified CAD Cells.*

*The bidder **IS** required to obtain and maintain current any operating permits or licenses (other than the environmental permits mentioned above) required for the bidder to complete his/her work, including (but not limited to) captain's licenses, equipment operator licenses, equipment registrations, etc.*

*Appendix A is hereby incorporated within the contract documents as an attachment to Section 0800 of the specifications by reference.*

Q: Will placing these TSCA sediments into the CAD cell be interpreted as violating the clean water act or any other illegal dumping of hazardous waste into a public waterway?

A: No. See previous question.

Q: Has any authorization or some determination been given to EPA Region I and or the City of New Bedford from either Superfund Headquarters or EPA TSCA division to allow the removal and disposal of TSCA (Hazardous Waste) from a Superfund site into a NON-TSCA Cad Cell?

A: *The bidders shall note that in accordance with USEPA Superfund Record of Decision for the New Bedford Harbor Superfund Site, dated September 25, 1998, Section I, "The New Bedford Harbor Superfund Site (the Site), located in Bristol County, Massachusetts, extends from the shallow northern reaches of the Acushnet River estuary south through the commercial harbor of New Bedford and into 17,000 adjacent areas of Buzzards Bay." Therefore, CAD Cell 1 and CAD Cell 2 are within the Superfund Site and therefore, dredging of material from either the EPA Dredge Area or the New Bedford Rowing Facility Dredge Area and transportation to either CAD Cell 1 or CAD Cell 2 does not constitute removal of Superfund material from a Superfund Site, and instead is simply transportation of material within a Superfund Site. A TSCA determination rendered by USEPA (Appendix A) has concluded that disposal of these sediments within CAD Cell 2 will not pose an unreasonable risk to human health or the environment.*

Q: Under the State of Massachusetts Hazardous waste laws pertaining to dredging and disposal of TSCA waste, has any state permits or authorization been given to EPA Region I and or the City of New Bedford to perform this work?

A: *As stated before, the State Enhanced Remedy Committee derives its authority from Section XI of the USEPA Superfund Record of Decision for the New Bedford Harbor Superfund Site, dated September 25, 1998. The State Enhanced Remedy Committee includes multiple state and federal agencies that review proposed actions prior to implementation, including MassDEP, EPA, CZM, USACE, NOAA Fisheries, Chapter 91, the New Bedford Conservation Commission, and the Massachusetts DMF, but has federal authority granted by USEPA. The SER Committee provides the authority under which this work is being accomplished.*

*Additionally, the Constitution of the United States enumerates certain powers which are granted to the United States. (See, e.g., U.S. Const. art. 1, Section 8. The U.S. Constitution establishes the supremacy of federal law within the ambit of its authority. U.S. Const. art. 6, cl. 2. "A corollary to this principal is that the activities of the Federal Government are free from regulation by any state" unless Congress has authorized regulation of federal instrumentalities by the state. Mayo v. United States, 319 U.S. 441, 445, 87 L. Ed. 1504, 63 S. Ct. 1137 (1943).*

*The State Enhanced Remedy Committee makes every effort to coordinate its actions with the appropriate state agencies, federal, and local agencies. Additionally, the Performance Standards set in place for this work have been reviewed and approved by the various state and local regulatory agencies to ensure compliance with standards that would be imposed during a conventionally permitted project.*

Q: The State of Massachusetts MADEP 401 Water Quality Program Standards dealing with turbidity and MADEP Chapter 91 Waterways Special Waterway conditions states the following; "Dredge material shall be transported to suitable disposal facilities; unregulated dumping of dredge materials is not permitted" Have both of these State permitting Agencies been Notified that this is TSCA Hazardous waste from the Superfund site? If they have, can you supply us both of the permits or letters authorizing the disposal of the TSCA waste? If not, why wouldn't this activity be classified as unregulated dumping?

A: *See responses above.*

Q: Does the removal of the 11,000 CY of TSCA sediments and disposal in a NON-TSCA cell in the middle Harbor from the Superfund site comply with the ROD?

A: *See earlier comments. Please note that navigational dredging under the State Enhanced Remedy was authorized under the 1998 ROD. A TSCA determination*

*(Appendix A) has concluded that disposal of these sediments within CAD Cell 2 will not pose an unreasonable risk to human health or the environment.*

Q: Does EPA Region I have to go through an ESD to authorize the disposal of these sediments in a Non-TSCA cad cell?

A: *See earlier comments. Please note that navigational dredging under the State Enhanced Remedy was authorized under the 1998 ROD. The remedy for the New Bedford Superfund Site has not changed, and therefore an ESD is not necessary at this time. A TSCA determination (Appendix A) has concluded that disposal of these sediments within CAD Cell 2 will not pose an unreasonable risk to human health or the environment.*

Q: Have Region I and/or the City of New Bedford gone through a public hearing to notify the public that TSCA (Hazardous Waste) from a Superfund site will be disposed of into a Non-TSCA cad cell?

A: *Please see earlier comments. The public hearing establishing the authority of the State Enhanced Remedy was completed during the finalization of the 1998 ROD. A TSCA determination (Appendix A) has concluded that disposal of these sediments within CAD Cell 2 will not pose an unreasonable risk to human health or the environment.*

**Q: It was clearly stated by the engineer that the sediments in the upper harbor are TSCA Hazardous waste presents other important issues that need to be clarified ASAP.**

Q: Will all contractors be required to have its employees Hazwoper trained under OSHA 1910? Will entry and exit physicals be required?

A: *Part 1.2 of Section 01900 of the contract documents states that "At a minimum, all work must be completed under the direction of a 40-Hour OSHA Hazardous Waste Operations (29 CFR 1910.120) trained individual. All personnel coming in contact with sediment contaminated with hazardous materials must have, or obtain, similar OSHA training." Bidders will be required to comply with OSHA regulations as stipulated above as they apply to 29 CFR 1910.120.*

*Please note that while some historic sediment samples collected in preparation of navigational dredging analyzed for PCBs have contained levels PCBs in excess of the 50 mg/kg of total PCBs (the threshold for regulation under TSCA), the vast majority of samples collected of the navigational dredge areas have contained less than 50 mg/kg of total PCBs.*

Q: Who is responsible for the Community air monitoring during the Dredging operations in the superfund site? The last mechanical removal in the upper harbor was performed in Level B, with extremely high levels of VOC's and air borne

TCE, PCE, 1,2-dichloroethylene, and Vinyl Chloride, should the contractor bid this work in level B supplied air or level D? If air monitoring requires an upgrade to level B or C, how is the contractor compensated?

*A: The mechanical removal cited within your question was conducted in June 2008, at the highly contaminated shoreline sediments immediately adjacent to the vacant Aerovox mill on Belleville Avenue in New Bedford. This excavation was performed within one of the source areas for the Superfund site. The EPA Dredge Area and the New Bedford Rowing Facility Dredge Areas are located a minimum of 5,000 feet from the June 2008 excavation area, and are not anticipated to be within a source area for the Superfund site.*

*The primary contaminants anticipated to be encountered during dredging are PCBs and certain metals. The bidder shall anticipate that the work detailed within the contract documents can be completed in modified Level D PPE. Air monitoring is currently not anticipated to be required as a part of the work of this contract.*

**Q:** What Chemicals of Concerns are there in the sediments besides PCB's?

*A: The primary contaminants anticipated to be encountered during dredging are PCBs and certain metals.*

**Q:** Will the contractor be responsible for air monitoring for the protection of its employees?

*A: Air monitoring is currently not anticipated to be required as a part of the work of this contract. The bidder is free to conduct air monitoring for the protection of its employees if it so wishes.*

**Q:** Who is responsible for water quality monitoring for soluble VOC's and PCB's to ensure no future liability to the contractor for causing the spread of contamination?

*A: The primary contaminants anticipated to be encountered during dredging are PCBs and certain metals. PCBs and metals encountered during the project are anticipated to be adsorbed to sediment that will be encountered during dredging operations. Therefore, the SER Committee has adopted the use of turbidity (a measurement of sediment entrained within the water column) as a sufficient measure of water quality. The Owner's Representative will utilize turbidity measurements in the water column to determine whether dredging operations are impacting water quality such that contingency measures will need to be implemented. This water quality measurement methodology is specified within the Performance Standards (see attachments to Section 0800) for this project.*

- Q: How is the contractor compensated if the project is stopped or has to slow down due to water quality or air monitoring results?
- Q: *The bidder is required to conduct operations in such a manner as to minimize or mitigate impacts to water quality. Water quality criteria are stipulated in Section 01135 of the contract documents and within the Performance Standards attached to Section 00800 of the contract documents. Prior to the start of construction, the bidder shall submit a contingency plan that will outline the bidder's preferred methodology for implementation of contingency measures should water quality criteria be exceeded. Turbidity measurements collected by the Owner's Representative will be utilized to determine whether impacts to water quality are unacceptable as stipulated in Section 01135. Should water quality criteria be exceeded due to dredging or dewatering operations, the bidder will be required to implement its contingency plan. Should contingency measures be insufficient to control water quality impacts, the Owner's Representative may order the halt of work until the bidder implements sufficient measures to control water quality. Exceedances of water quality criteria leading to delays of the work stipulated within the contract shall not be cause for a change in the contract price of any kind.*
- Q: The Bid Specifications call this project Navigational Dredging, for this contract in regards to providing bonds and special insurances. It needs to be clear that these bonds will be for environmental dredging of TSCA (Hazardous Waste). The bond rates are different. Will the City please clarify in writing that this dredging is for environmental dredging?
- A: *For the purposes of this project, the State Enhanced Remedy Committee has determined that the work to be conducted at the EPA Dredge Area and the New Bedford Rowing Facility is navigational dredging associated with the State Enhanced Remedy provision of the 1998 ROD, as opposed to remedial dredging being conducted on behalf of USEPA.*
- However, the material to be dredged during the course of this work is impacted by PCBs and certain metals. Some of the material to be dredged during the course of this work may contain concentrations of PCBs in excess of the 50 mg/kg of total PCBs criteria that determines whether or not the material is regulated under the Toxic Substances Control Act. However, a TSCA determination (Appendix A) has concluded that disposal of these sediments within CAD Cell 2 will not pose an unreasonable risk to human health or the environment.*
- Q: Pollution Liability Insurance Section 2, requires certification from the disposal site? How is this possible, with this being the cities CAD cell? The contractor and it's insurance carrier cannot be responsible for the disposal of TSCA waste into a Non-TSCA CAD cell if in the future this was determined to be illegal. Will the City of New Bedford give the contractor an indemnification for this?

A: *The bidder is referring to Section 00700, Part 5.04, B, 2. This section refers only to the disposal facility that the bidder has stipulated will receive debris generated during the course of the work outlined within the contract documents. Additionally, the Certification of Dumping Facilities form required to be submitted with the bid package also refers only to the disposal facility that the bidder has stipulated will receive debris generated during the course of the work outlined within the contract documents. The bidder is not required to furnish a Certificate of Insurance from CAD Cell 1 or CAD Cell 2.*

Q: Section 01135.3.5 Water Quality states; “standing water or free liquids removed from scows before disposal shall be pumped through a sand filter”. These are complex sediments with several Chemicals of Concern from a Superfund site. The Superfund water that is currently being treated has a discharge requirement of; 65ppb PCB’s, 5.6 ppb copper, 9.3 ppb Cadmium, 50 ppb Chromium, and 8.5 ppb lead, under a NPDES permit. These issues present some important questions that need to be clarified ASAP.

Has any authorization or some determination been given to EPA Region I and or the City of New Bedford from either Superfund Headquarters, State of Massachusetts, or EPA TSCA division to allow the direct discharge of untreated water (for Chemicals of Concern) to be direct discharged unregulated in the middle harbor? This is hazardous waste from the Superfund site, not navigational dredging. Is a NPDES, or any State permit required to discharge water back to the harbor?

A: *No authorization for direct discharge of untreated water has been granted within the contract documents. The Chemicals of Concern for the areas to be dredged during the course of this work are PCBs and metals that are anticipated to be adsorbed to sediment that will be encountered during dredging operations. Therefore, removal of particulates from water generated while dewatering scows constitutes sufficient treatment for removal of the Chemicals of Concern prior to discharge of the water back to the harbor. The water quality requirements for this work have been stipulated via the Project Performance Standards, which were adopted by the SER Committee for this work.*

*The State Enhanced Remedy Committee includes multiple state and federal agencies that review proposed actions prior to implementation, including MassDEP, EPA, CZM, USACE, NOAA Fisheries, Chapter 91, the New Bedford Conservation Commission, and the Massachusetts DMF. Additionally, the Performance Standards set in place for this work have been reviewed and approved by the various state and local regulatory agencies to ensure compliance with standards that would be imposed during a conventionally permitted project. No NPDES permit is required for this project.*

*For the purposes of this project, the State Enhanced Remedy Committee has determined that the work to be conducted at the EPA Dredge Area and the New*

*Bedford Rowing Facility is navigational dredging associated with the State Enhanced Remedy provision of the 1998 ROD, as opposed to remedial dredging being conducted on behalf of USEPA.*

Q: Who is responsible for the water monitoring to make sure that the water meets the same criteria as the superfund site?

A: *As stipulated within Section 01135, turbidity measurements collected by the Owner's Representative will be utilized to determine whether impacts to water quality are unacceptable as stipulated in Section 01135.*